

WASHBURN MINING CO.

IBLA 94-777

Decided August 9, 1995

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay rental fees or submit a timely certification of exemption from payment for both the 1993 and 1994 assessment years. NMC 160359-NMC 160370.

Vacated.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A decision denying a small miner's exemption and declaring claims abandoned and void for failure to pay rental fees on the grounds that the claimant the claimant shows that it filed a certification of exemption for the 1993 and 1994 assessment years on Aug. 26, 1993, listing only 10 claims, and where, at the same time, it recorded its Statement of Annual Assessment Work with the county recorder and filed notice with the Forest Service for those same 10 claims. In those circumstances, the claimant has proven that it dropped two claims in order to meet the requirements of the small miner's exemption.

APPEARANCES: Eddie Mentaberry, Washburn Mining Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Washburn Mining Company (appellant) has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), declaring mining claims (NMC 160359-NMC 160370) abandoned and void for failure to pay rental fees or submit a timely certification of exemption from payment for both the 1993 and 1994 assessment years.

BLM's decision declared the claims abandoned and void because the requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Act) (P.L. 102-381, 106 Stat. 1374, 1378-79) had not been met. BLM explained that, under the Act, in order to maintain a mining claim, claimants had to pay rental fees in the amount of \$100 per claim or submit a certification of exemption from payment of rental fees (small miner exemption) for both the 1993 and 1994 assessment years on or before August 31, 1993.

BLM did not receive any rental fees for appellant's claims, but did receive timely filed certification of exemption forms for both years listing 10 claims. 1/ However, BLM stated in its decision that its "records indicate that [appellant is] the owner of more than 10 mining claims" and listed the claims it believed appellant owned. 2/ BLM accordingly concluded that the small miner's exemption did not apply and declared the claims abandoned and void.

[1] On October 5, 1992, Congress enacted the Act, a provision of which relating to mining establishes that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993, in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 \* \* \*.

106 Stat. 1378. The Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

Implementing Departmental regulations provide as follows:

Mining claim or site located on or before October 5, 1992. A nonrefundable rental fee of \$100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of \$200.

43 CFR 3833.1-5(b) (1993).

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1/ Those claims were: Urrea BAT (NMC 160365), Urrea BI (NMC 160366), Urrea IDU (NMC 160368), Urrea LAU (NMC 160369), Urrea BOSTE (NMC 160367), Urrea SEIS (NMC 160370), TAC #1 (NMC 160359), TAC #2 (NMC 160360), TAC #3 (NMC 160361), and TAC #4 (NMC 160362).

It appears that appellant incorrectly listed the BLM recordation serial numbers for the claims as "[NMC] 160365 (et al.)" and that a BLM employee listed the correct serial numbers on the certificates. BLM so advised appellant by letter dated Jan. 28, 1994.

2/ Those claims were the same as the 10 listed in footnote 1, plus two more: TAC #5 (NMC 160363), and TAC #6 (NMC 160364).

The only exemption provided from this rental requirement is the so-called small miner's exemption, available to claimants holding 10 or fewer claims on Federal lands who meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993). William B. Wray, 129 IBLA 173 (1994). The regulations require that a claimant must apply for the small miner's exemption by filing certifications of exemption on or before August 31, 1993. 43 CFR 3833.1-7(d) (1993). That regulation provides, "the small miner shall file a separate statement on or before August 31, 1993, supporting the claimed exemption for each assessment year a small miner's exemption is claimed."

As noted above, appellant timely filed certifications of exemption for both years, but BLM denied the exemption because it concluded that appellant owned more than 10 claims. In its notice of appeal, appellant noted that, on August 24, 1993, it had recorded its Statement of Annual Assessment Work with the Humboldt County Recorder in Winnemucca, Nevada, for only 10 claims, viz., the 10 claims listed on the certificates of exemption. It also notes that the notice it filed with the Forest Service, United States Department of Agriculture, concerned those same 10 claims. Appellant has provided copies of these filings. It states that it "dropped two claims in order to meet" the small miner's exemption requirements.

In these circumstances, we are satisfied that appellant did own 10 claims as of the date it filed its certification seeking the small miner's exemption. BLM's decision is properly vacated. 3/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's decision is vacated.

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David L. Hughes  
Administrative Judge

I concur.

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Gail M. Frazier  
Administrative Judge

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3/ BLM may have realized that its decision was incorrect. In the transmittal memorandum sending the case record to this Board, BLM checked a box stating "[p]lease remand to this office [BLM] for further action." However, no explanation for the request for remand was presented. In the absence of such, it was not acted upon.

